



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

October 31, 2003

Via First Class Mail

Robert Noonan
Robert Noonan & Associates
98 Briarwood Drive
Meriden, CT 06450

Re: Application of Public Act 03-77

Dear Attorney Noonan:

I am responding to your letter dated September 26, 2003 to Commissioner Susan Cogswell. In your letter you asked many questions concerning the application of State of Connecticut Public Act 03-77 based on your conversations with the "community of insurance professionals and employers." Your questions are duplicated below in bold, with my response in regular font.

Coverage of the Statute

The statute applies to "a group comprehensive health care plan" and provides a right of continuation of health insurance for the same periods as exist under COBRA. The new provision of this law however, provides for a right of continuation that goes beyond that provided by COBRA.

Does this statute apply to the group health plans of employers of any size?

Yes, per section 38a-546 of the Connecticut General Statutes.

Covered Employee

The title of the statute states that this is an extension of Group Health Insurance "for individuals sixty-two and over", yet the statute itself makes no mention of age as being a requirement for the individual to qualify for this extension. Instead, the statute states that extension is available to an individual whose employment is interrupted by eligibility for social security income.

Is this extension right available to any employee who experiences a reduction in hours, leave of absence or termination of employment as a result of qualifying for social security, or is this extension available only to those employees who are sixty two years of age and older?

As currently drafted, the Act will apply without regard to age.

Qualifying Event: Cause for The Employment Action

The statute provides that the continuation right exists under the new provision if "such reduction of hours, leave of absence or termination of employment results from an employee's eligibility to receive Social Security income". Rarely does an employment action result from an employee's eligibility to receive social security income.

Does the statute require that the employee specifically terminate employment, be granted a leave of absence, or experience a reduction in hours, because, the person is eligible for Social Security income?

Whereas the Act does not require an employee to make a declaration as to their intent, only eligibility to receive Social Security income on the day of the qualifying event and during the extension period afforded by Public Act 03-77 is considered necessary by the Insurance Department for continuation. A carrier or employer may require evidence of such eligibility. Such continuation should be provided in accordance with the terms and conditions of COBRA.

Qualifying Event: Eligibility for Social Security Income

The new provision states that the extension pertains when the employment action “results from an employee’s eligibility to receive Social Security income”. The new provision does not specify the type of social security income that the individual receives in order to be encompassed by the new provision of the statute.

Presumably, this means that a young married employee who experiences the loss of a spouse and qualifies for social security survivor’s benefits would have a right of continuation under this statute as would that employee’s dependents. Under these circumstances, the continuation period could be considerably long. Is there any distinction as to the type of social security income that would qualify the person for the extension?

No.

Second, does the statute require that the individual take an affirmative step, such as an application for Social Security benefits and actually qualify, in order to be entitled to this extension?

No.

Employee and Dependents: Duration of Coverage

The new provision states that the new continuation provision is available to the employee and “such employee’s covered dependents until midnight of the day preceding such person’s eligibility for benefits under Title XVIII of the Social Security Act.”

Does the term “such person” refer to the employee or to the employee only or does it also refer to a dependent for whom the benefits are extended?

The Insurance Department interprets “such person” to refer to the employee, not their covered dependents.

Employee and Dependents: Right of Independent Election:

Does the statute provide each dependent with a right of independent election for this continuation as exists under COBRA?

Yes, to the extent COBRA would permit an independent election. When possible, please consider this Act to simply extend a person’s qualification for COBRA. If the rules for administering COBRA can be followed, they should.

Notice of Extension Right and Forms

Does the statute require any notice either from the employer, the group health plan, or the insurance carrier to notify individuals of this extension? Will the Insurance Department require that employers or carriers change their continuation forms so that the new provision is incorporated?

To the extent a notice is required to be accurate and complete, it should be revised accordingly.

Termination of Coverage: Medicare Eligibility

The new provision states that the new continuation provision is available to "such employee's covered dependents until midnight of the day preceding such person's eligibility for benefits under Title XVIII of the Social Security Act."

Does the statute require any affirmative act on the part of the individual to become "eligible for benefits under Title XVIII of the Social Security Act"?

No.

Cost for Continuation of Coverage

COBRA provides a cost formula for the continuation of coverage based on the qualifying event. Generally a plan may charge the premium and an additional 2% administrative fee. There is a provision in COBRA for an extension of benefits for an additional eleven months in which the plan may charge an additional 50%.

What may an employee and dependents be charged for coverage under this new provision?

An individual may be charged the permissible applicable premium under COBRA.

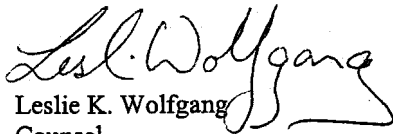
Enforcement

How and against whom will the statute be enforced?

The Insurance Department will enforce this Act to the extent its licensees are implicated and in the same manner as other enforcement actions taken pursuant to title 38a and chapter 54 of the Connecticut General Statutes.

This opinion is predicated on the continuing accuracy of the facts and representations made in your letter and upon the continuation of current laws and regulations. Should either change, this informal opinion would have to be reviewed in light of the changed circumstances. Moreover, this opinion should not be construed as constituting a determination by the Insurance Department that the program as described in your letter is found to comply with Connecticut law. Because this opinion is informal and is not a formal declaratory ruling made pursuant to section 4-176 of the Connecticut General Statutes, the Insurance Department expressly reserves the right to re-evaluate at a later date the position set forth above. In addition, this letter should not be construed as an endorsement of any program described in your September 26, 2003 letter.

Very truly yours,


Leslie K. Wolfgang
Counsel